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Feb 17, 2021	
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

Magistrate Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AUSTIN C. O'BRYON,

Defendant.

NO. CR19-5083

AMENDED FINDINGS AND ORDER  
ACCEPTING DEFENDANT FOR DEFERRED  
PROSECUTION, APPROVING TREATMENT  
PLAN, AND DIRECTING DEFENDANT TO  
TAKE TREATMENT AS PRESCRIBED

THIS MATTER, coming on for hearing this 28th day of January 2021, upon the Probation Officer's report dated November 8, 2019; the defendant appearing in person and by his attorney, Jerome Kuh,; the United States of America being represented by Barbara J. Sievers, Assistant United States Attorney; the Court, having examined and incorporated into the record Petitioner's new evaluation and treatment report prepared by Access Counseling Services, Middletown Ohio, and now amends the files and records herein, being fully advised in the premises, does now make and enter the following:

**I. AMENED FINDINGS OF FACT**

A. On or about the 9<sup>th</sup> day of December, 2019, Petitioner was charged with the offense charged in the Information. This offense occurred as a direct result of alcoholism/chemical dependency problems;

B. Petitioner suffers from an alcohol/drug problem and is in need of treatment;

1 C. The probability of similar misconduct in the future is great if the problem is not  
2 treated;

3 D. Petitioner is amenable to treatment;

4 E. An effective rehabilitative treatment plan is now available to Petitioner through  
5 Access Counseling Services, Middletown Ohio, an approved treatment facility as designated  
6 by the laws of the State of Washington, and Petitioner agrees to be liable for all costs of this  
7 treatment program;

8 F. That Petitioner agrees to comply with the terms and conditions of the program  
9 offered by the treatment facility as set forth in the diagnostic evaluation from Access  
10 Counseling Services, Middletown Ohio, attached to this Amended Findings filed herewith,  
11 and that Petitioner agrees to be liable for all costs of this treatment program;

12 G. That Petitioner has knowingly and voluntarily stipulated to the admissibility  
13 and sufficiency of the facts as contained in the written police report attached to Statement of  
14 Petitioner filed herewith.

15 H. That Petitioner has acknowledged the admissibility of the stipulated facts in  
16 any criminal hearing or trial on the underlying offense or offenses held subsequent to  
17 revocation of this Order Granting Deferred Prosecution and that these reports will be used to  
18 support a finding of guilt;

19 I. That Petitioner has acknowledged and waived the right to testify, the right to a  
20 speedy trial, the right to call witness to testify, the right to present evidence in his or her  
21 defense, and the right to a jury trial;

22  
23 From the foregoing FINDINGS OF FACT, the Court draws the following:

24 **II. AMENDED CONCLUSIONS OF LAW**

25 A. That the above-entitled Court has jurisdiction over the subject matter and  
26 Petitioner AUSTIN C. O'BRYON, in this case;

27 B. That Petitioner's Petition for Deferred Prosecution meets the requirements of  
28 RCW 10.05 et seq.;



1 C. That the diagnostic evaluation and commitment to treatment meets the  
2 requirements of RCW 10.05.150;

3 D. That Petitioner is eligible for deferred prosecution.

4 **III. ORDER**

5 Having made and entered the foregoing AMENDED FINDINGS OF FACT and  
6 CONCLUSIONS OF LAW, it is hereby

7 ORDERED that the defendant is accepted for deferred prosecution. The prosecution  
8 of the above-entitled matter is hereby deferred for five (5) years till June 2024 pursuant to  
9 RCW 10.05 et seq., upon the following terms and conditions:

10 A. Petitioner shall be on probation for the deferral period and follow the rules and  
11 regulations of probation;

12 B. Petitioner shall now enroll in and successfully complete the two-year treatment  
13 program recommended by Access Counseling Services, Middletown Ohio, according to the  
14 terms and conditions of that plan as outlined in the diagnostic evaluation, a true copy of  
15 which is attached to the Petition and incorporated herein by reference. Petitioner shall not  
16 change treatment agencies without prior Probation approval;

17 C. The treatment facility, Access Counseling Services, Middletown Ohio, shall  
18 file with the United States Probation Office status reports of Petitioner's compliance with  
19 treatment, monthly during the first year of the deferred prosecution period and every three  
20 (3) months during the second year. The Court may increase the frequency of these reports at  
21 its discretion;

22 D. Petitioner shall notify U.S. Probation within 72 hours of any residence change.

23 E. Petitioner shall abstain during the deferred prosecution period from any and all  
24 consumption of alcoholic beverages and/or non-prescribed mind-altering drugs;

25 F. Petitioner shall not operate a motor vehicle on the public highways without a  
26 valid operator's license and proof of liability insurance sufficient to comply with the state  
27 laws on financial responsibility;  
28

1 G. Petitioner shall be law abiding and shall not commit any alcohol/drug related  
2 offenses or other criminal offenses during the period of deferral,

3 H. Petitioner shall notify U.S. Probation within 72 hours of being arrested,  
4 questioned, or cited by Law Enforcement;

5 I. In the event that Petitioner fails or neglects to carry out and fulfill any term or  
6 condition of her treatment plan or violates any provision of this Order or any rule or  
7 regulation of her probation officer, upon receiving notice, the Court shall hold a hearing to  
8 determine why Petitioner should not be removed from deferred prosecution and prosecuted  
9 for the offense/offenses charged;

10 J. In the event the Court finds cause to revoke this deferred prosecution, the  
11 stipulated police reports shall be admitted into evidence, and Petitioner shall have her guilt or  
12 innocence determined by the Court;

13 K. That the statement of Petitioner for Deferred Prosecution shall remain sealed,  
14 and all subsequent reports or documents relating to her treatment information shall be sealed,  
15 to maintain confidentiality of Petitioner's treatment information;

16 L. That the Department of Licensing be notified of this Order accepting the  
17 Petitioner for deferred prosecution;

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1 M. Upon proof of Petitioner's successful completion of five years (June 2024)  
2 deferral period in this Order, the Court shall dismiss the charges pending against Petitioner.

3 N. Additional conditions:  
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5 Mr. O'Bryon must participate in substance abuse treatment at the discretion of probation  
6 officer. The defendant shall pay a co-pay, not to exceed \$25 monthly, for services based on  
7 his ability to pay.

8 Mr. O'Bryon shall enroll in and successfully complete treatment at Access Counseling  
9 Services, in Middletown Ohio, and follow the recommended terms and conditions of the  
10 program. He shall not change treatment agencies without prior approval from the Court in  
11 the Western District of Washington.  
12

13  
14 Dated this 17th day of February, 2021.  
15

16  
17   
18 J. RICHARD CREATURA  
19 United States Magistrate Judge

20 Presented by:

21   
22 BARBARA J. SIEVERS  
23 Assistant United States Attorney  
24

25 /s/ \_\_\_\_\_  
26 JEROME KUH  
27 Assistant Federal Public Defender  
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